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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 293

FIRST NATIONAL BANK OF SHREVEPORT, ET AL.,

versus

LOUISIANA TAX COMMISSION, ET AL.

BRIEF OF APPELLANTS OPPOSING MOTION TO DISMISS APPEAL.

LEWELL C. BUTLER,
J. P. WALLACE,
HOWARD B. WARREN,
E. WAYLES BROWNE,
Attorneys for Appellants.

Montgomery-Andree Printing Co., Inc., 430-32 Chartres, N. O., La.

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BRIEF OF APPELLANTS OPPOSING MOTION TO DISMISS APPEAL.

May It Please the Court:

The above cause is now pending on appeal from a final judgment of the Supreme Court of Louisiana. The appellants have heretofore filed a statement in support of the jurisdiction of the United States Supreme Court, while the appellees have not urged anything against the jurisdiction.

While we urge that the motion to dismiss has been filed prematurely, and is without merit, we answer the same in this brief with full reservation of our right to have

the case proceed without delay or retardation, in conformity with rule seven of the Court.

The appellees herein have taken the position that this appeal should be dismissed for the reason that each appellant should have taken separate appeals. Their motion and brief attempt to treat this cause as one in which three wholly separate and distinct cases were tried and disposed of in separate and distinct judgments, and as cases which were never consolidated or treated as a single cause disposed of by a single judgment of the court.

It is true that this case was brought originally by separate petitions; but the cases being identical, a motion to consolidate them, (quoted in appellee's brief) was concurred in by all parties concerned, and the trial court entered the following order on April 22, 1931, to-wit:

> "The motion to consolidate is sustained, and accordingly suit No. 56,012, First National Bank vs. Louisiana Tax Commission, et al, suit No. 56,115, Commercial National Bank vs. Louisiana Tax Commission, et al, and Suit No. 56,125, American Nation Bank vs. Louisiana Tax Commission, et al., are ordered consolidated."

On April 28, 1931, the consolidated cases came on for trial and in open court and at the beginning of the trial, the following agreement was entered into and dictated into the record, to-wit:

> "It is agreed between all parties in the three suits consolidated that each plaintiff adopt the allegations in the petitions of the other, and that all evidence offered that is admissible as to one plaintiff shall be admissible as to all and considered as to

all. And that the same rule shall apply as to the defendant with reference to the answers filed in each case hereby consolidated in the same way." (See Tr. page 226, lines 1 to 9).

The causes thereupon and thereafter were treated as one, and the District Judge disposed of the matter in one single written opinion Tr. pages 210 to 221, inclusive.

The appellees herein moved for an appeal to the Supreme Court of Louisiana which they took up in **one transcript and docketed the same in the Supreme Court of Louisiana as one case** bearing No. 31,528 and being entitled First National Bank, et al., versus Louisiana Tax Commission, et al. The procedure in the Supreme Court of Louisiana was similarly that of one case. One argument was had and the Supreme Court of Louisiana disposed of the cause in one written opinion and disposed of the joint application for rehearing in one per curiam opinion. (See Tr. for opinion, pages 464 to 481 and per curiam, pages 488 to 489).

Thus we have a case in which the causes were consolidated, treated as such, and so understood by the trial Court and the Supreme Court of Louisiana, as well as by all parties concerned, When we took our appeal it was necessarily joint, because of the fact that the issues were identical, the cases were consolidated and the appellants were bound by a single judgment based upon a single record which should not and could not possibly be separated. The consolidation was made perfect by the law, practice and procedure of Louisiana, as recognized by the trial court, the Supreme Court of Louisiana and all parties to the cause.

Counsel in their brief to dismiss the appeal rely upon cases which we fail to see are in point. Our examination of their authorities reveals that separate verdicts and judgments were rendered in causes which were not identical, or the cases were kept separate by agreement, or some particular state practice. All of the authorities recognize the rule that where the cases were consolidated and one judgment is rendered, only one appeal is necessary.

The last line of the quotation from *2 R. C. L.* Title Appeal & Error, paragraph 79, cited by appellee in their brief on page 6 says:

> "Where several causes are consolidated and a single judgment is rendered, such judgment may be reviewed by a single appeal or writ of error."

In *O'Connor v. Force (Wash.), 108 Pac. 454*, it was held that where two causes of action were consolidated by agreement of counsel and a single judgment was entered, a judgment could be brought up for review by a single appeal.

In *Kelly v. Wellsburg & B. Valley Co., et al., Adamson, et al., v. Same, 81 S. E. (W. Va.) 712*, the Court said:

> "Upon an alleged irregularity in this appeal, a motion to dismiss it is founded. The objection is that it seeks to bring up for review two separate and distinct causes. Its purpose is to review decrees in two suits; but they were, in substantial respects, heard together. Moreover, some of the issues made ran through both causes, and the depositions applicable to both were taken and filed as in a single case. Separate orders of reference were originally made; but both causes were recommitted by a single one, and, under the separate references,

the commission made a single report. In several other instances single orders and decrees were entered, and always without objection by any of the parties. All of the heavy costs were made as if in a single suit, and it was impossible to bring up the more voluminous and expensive parts of the record in one cause without bringing them up in the other.

"The two records were inseparately tied together in the making thereof by the voluntary action of all the active parties to both. In view of this situation, all are clearly estopped to complain of the burden of costs incident to an appeal in the two cases as if they were one, for it is obviously a result of their own conduct and agreements, express or implied. Though not formally brought on to be heard together in the trial court, nor in all respects so actually heard, they were so treated by the parties, their counsel and the court in many important **respects, and inseparately bound together in the procedure, wherefore there was a clear right to bring up the decrees and records in both by a single appeal, and the motion to dismiss must be overruled."**

The Supreme Court of New Mexico has held that where actions are ordered consolidated in District Court for purpose of trial only, as allowed by *Code 1915, Sec. 4212*, but trial court and parties treat proceedings as a single case and file pleadings as though it were one case, and there is a single judgment, with one appeal, it is not necessary to docket two appeals in Supreme Court. *Palmer v. Town of Farmington, 179 Pac. 227; 25 N. M. 145.*

Also another case has said that where three cases were tried together, and the same evidence received by consent in all, and a single decree entered, and the pleadings, taken together, make issues to which the decree is re-

sponsive, the cases will be treated, or appealed, as if an order of consolidation had been made.

Bramell v. Adams;
Same v. Collins, 47 S. W. 931; 146 Mo. 70.

In separate actions on insurance policies consolidated for trial, where beneficiaries were represented by same guardian, and by order of District Court, made upon the stipulation of counsel, cases are considered as one for purpose of review and as requiring but one bill of exceptions, one record, one writ of error, etc., the Circuit Court of Appeals will exercise jurisdiction to review the judgments. *American Central Life Insurance Co. v. American Trust Co., 5 Fed. (2nd) 71; American Trust Co. v. American Central Life Insurance Co., 5 Fed. (2) 69,* and certiorari denied 1925, *46 Sup. Ct. 20; 269 U. S. 559; 70 L. Ed. 411.*

See also:

Fosh v. West Kentucky Coal Co., 164 C. C. A. 156, 252 Fed. 44.
Gila Bend Reservoir v. Gila Water Co., 202 U. S. 1026, 50 L. Ed. 274.

A contention by appellant on appeal which is inconsistent with its formal admission below, is not maintainable. *Hughes Fed. Practice, Sec. 5613.*

One who consents to the hearing in equity of a legal cause of action, or to the trial at law of an equitable cause of action, is estopped from successfully objecting to the method of trial in an Appellate Court. *Hooven v. Owens*

& Rentschular Co. v. Featherstone (C. C. A. Mo.) 111 Fed. 81 reviewing *(C. C. 1900) 99 Fed. 180* and a plaintiff cannot object that the proceeding for review taken by the defendant was by equity-appeal rather than by law appeal, where the action was in the form of a bill in equity, and prayed for equitable relief, and the suit was treated as one in equity by the court below.

Madison v. McKenzie (C. C. A. Alaska 1906) 144 F. 64.

We find that the U. S. Revised Statutes permits consolidations, as shown by *Section 921:*

> "When causes of a like nature or relative to the same question are pending before a court of the United States, or of any Territory, the court may make such orders and rules concerning proceedings therein as may be conformable to the usages of courts for avoiding unnecessary costs or delay in the administration of justice, and may consolidate said causes when it appears reasonable to do so."

We urge that counsels' contention that the cases were not consolidated is not meritorious. However, aside from that contention, the fact remains as has been pointed out heretofore, that the Supreme Court of Louisiana handed down one judgment which disposed of the whole matter. That one judgment binds each appellant herein and it is from that judgment that we have appealed. That judgment is based on the one record in one appeal lodged in the Supreme Court of Louisiana by the present appellees and these appellants necessarily took one appeal to review that judgment on the one record on which the Supreme Court of Louisiana arrived at its decision.

In the case of *Masterson v. Howard, 77 U. S. 416-418; 19 L. Ed. 953*, the Supreme Court of the United States said:

> "It is the established doctrine of this court that in cases at law, where the judgment is joint, all the parties against whom it is rendered must join in the writ of error; and in chancery cases, all the parties against whom a joint decree is rendered must join in the appeal, or they will be dismissed. There are two reasons for this: 1. That the successful party may be at liberty to proceed in the enforcement of his judgment or decree against the parties who do not desire to have it reviewed. 2. That the appellate tribunal shall not be required to decide a second or third time the same question on the same record."

We respectfully submit that the motion to dismiss the appeal herein, should be denied.

Respectfully,

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HOWARD B. WARREN,
E. WAYLES BROWNE,
Attorneys for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 293

FIRST NATIONAL BANK OF SHREVEPORT, LOUISIANA, ET AL.,

Appellants,

versus

LOUISIANA TAX COMMISSION, ET AL.,

Appellees.

Appeal from a Judgment of the Supreme Court of the State of Louisiana Reversing a Judgment of the District Court of Caddo Parish, Louisiana.

BRIEF ON THE MERITS ON BEHALF OF PLAINTIFFS, APPELLANTS.

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SUPREME COURT OF THE UNITED STATES

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Appellees.

Appeal from a Judgment of the Supreme Court of the State of Louisiana Reversing a Judgment of the District Court of Caddo Parish, Louisiana.

BRIEF ON THE MERITS ON BEHALF OF PLAINTIFFS, APPELLANTS.

May It Please the Court:

STATEMENT.

Bank shares in Louisiana are assessed under Act 14 of 1917, as amended by Act 116 of 1922, and Act 221 of

1928, printed in the appendix, and are taxed for state and local purposes at the rates levied generally on tangible property. Real estate owned by banks is assessed like real estate owned by others, of which no complaint is here made. The Louisiana Tax Commission issues annually a pamphlet of "Suggestions to the Assessors and Parish Boards of Equalization" (R. 265, *et seq.*). As to the assessments of banks, see p. 285.

Plaintiffs, three national banks located at Shreveport, were assessed in 1930 on furniture and fixtures and other personal property (R. 647-649-651) and their shareholders were assessed on capital, surplus and undivided profits with deductions as provided in the acts above mentioned (R. 648-650-652). They filed separate suits to enjoin the collection of the taxes, except on real estate. The suits were consolidated for trial thus: "It is agreed between all parties in the three suits consolidated that each plaintiff adopt the allegations in the petitions of the other, and that all evidence offered that is admissible as to one plaintiff shall be admissible as to all and considered as to all. And that the same rule shall apply as to the defendants with reference to the answers filed in each case hereby consolidated in the same way" (R. 95).

The trial court rendered judgment for plaintiffs (R. 82). On appeal the Supreme Court of Louisiana reversed the judgments in a single opinion and decree (R. 664). Rehearing was timely applied for and denied (R. 687). The grounds of complaint, alleged substantially by

all plaintiffs and particularly in paragraphs VI and VII of the petition of Commercial National Bank (R. 14), are:

VI.

"Petitioner's property and shares, except real estate, are not taxable by or under authority of the State of Louisiana."

VII.

"Acts No. 14 of the General Assembly of Louisiana of 1917, No. 116 of the Legislature of 1922, and No. 221 of the Legislature of 1928, which purport to authorize the taxation of bank shares, are invalid and inoperative as to petitioner and its shareholders and the assessment of petitioner's shares is illegal and unauthorized for the following reasons:

(a) The rates are greater than are assessed upon other moneyed capital in the hands of individual citizens of Louisiana coming into competition with the business of national banks.

(b) Moneyed capital, on which no taxes are assessed by the State of Louisiana or under its authority, exceeding the total capital of all national banks in the city of Shreveport and many times petitioner's capital, is and during 1930 was employed in direct, open and substantial competition with petitioner's business in the city of Shreveport and territory in the State of Louisiana over which petitioner's business extends, by persons, partnerships and corporations, other than associations chartered by the laws of the State or of the United States to carry on the business of banking.

(c) Persons, partnerships and corporations, other than associations chartered by the laws of the State or of the United States to carry on the business of banking, who employ and during 1930 did employ moneyed capital in direct, open and substantial competition with petitioner's business, in-

clude homestead and building associations, Federal Joint Stock Land Banks, associations commonly called Morris Plan Banks and Morgan Plan Banks, small loan companies licensed under Act No. 7 of the Extra Session of the Legislature of 1928, finance and securities companies licensed under Act No. 221 of the Legislature of 1926, pawnbrokers, life insurance companies, real estate mortgage investment companies, bond and investment brokers, and others engaged in one or more of the classes of business enumerated in Article I of this petition.

(d) Act No. 14 of 1917, as amended by Act No. 116 of 1922 and Act No. 221 of 1928, discriminates against capital employed in general banking in favor of shares in Federal Joint Stock Land Banks.

(e) Shares of stock in associations and corporations, other than associations chartered by the laws of the State or of the United States to carry on the business of banking, are not taxed or taxable in Louisiana.

(f) The Constitution of Louisiana exempts from taxation cash on hand or on deposit; loans or other obligations secured by mortgage on property located exclusively in the State of Louisiana and the notes or evidences thereof; loans by life insurance companies to policy-holders, secured solely by their policies; loans by homestead associations to their members, secured solely by stock of such associations; debts due for merchandise or other articles of commerce or for services; obligations of the State or its political subdivisions; the legal reserve of life insurance companies organized under the laws of this State, for all of which purposes moneyed capital is employed in direct, open and substantial competition with petitioner's business.

(g) Investments in direct, open and substantial competition with petitioner's business, in

bonds of other states of the United States and political subdivisions of such States, bonds of railways, railroads and other public utilities, manufacturing and industrial corporations, and bonds secured by real estate, except such as are exempt from taxation by law, are assessable under Act No. 163 of the Legislature of 1924, at 10% of their market value, and, in practice, rarely assessed.

(h) In assessing credits and securities, other than shares of associations chartered to carry on the business of banking, deduction is made for liabilities of the owner, whereas no such deduction is made in the assessment of petitioner's shares.

(i) The assessment is repugnant to Section 5219 of the Revised Statutes of the United States, U. S. C. A., Title 12, Section 548, and Section 1 of Article X of the Constitution of Louisiana, and denies petitioner and its shareholders the equal protection of law in violation of the Fourteenth Amendment of the Constitution of the United States."

The taxing authorities deny the facts and challenge the conclusions, except the allegations in sub-paragraphs (f) and (h) as to constitutional exemptions and statutory deductions. They plead that Act 163 of 1924 violates Section 4 of Article X of the State Constitution and that because of the unconstitutionality its discriminatory terms are of no concern. They allege that the value of furniture and fixtures was deducted from capital in the assessment of shareholders and that if the assessment of furniture and fixtures is illegal the assessed value thereof should be added to capital, but did not press the alternative claim for an increase in the assessment of capital.

The issues are: (1) Does the assessment of the bank shares violate Section 5219 of the Revised Statutes, U. S.

C., Title 12, Section 548, or the Equal Protection Clause of the Federal Constitution? (2) Is there any authority for assessing personal property of national banks?

ASSIGNMENT OF ERRORS (R. 690).

The Supreme Court of Louisiana erred:

(1) In holding that Act 14 of the General Assembly of Louisiana of 1917, as amended by Act 116 of 1922 and Act 221 of 1928, is not repugnant to section 5219 of the United States Revised Statutes, U. S. C., Title 12, Section 548, or the equal protection clause of the first section of the fourteenth amendment of the constitution of the United States.

(2) In refusing to hold that the taxation of personal property of national banks is unauthorized, invalid and violative of the above statutory and constitutional provisions.

(3) In holding that no substantial inequality results from taxing bank stock because other corporations, firms and individuals, whose capital is not taxed as such, are assessed on property in lieu of capital; whereas, the proof and admissions herein show that other corporations, firms and individuals who employ substantial capital in competition with the business of national banks are not taxed in fact equally with national banks and their shareholders.

(4) In holding that no discrimination results from assessing the capital, surplus and undivided profits of national banks, although the shareholders are not given

the benefit of deductions allowable under Act 24 of the Extra Session of the General Assembly of Louisiana of 1918 and actually allowed to others who employ substantial capital in competition with the business of national banks.

(5) In holding that no discrimination results from assessing the capital, surplus and undivided profits of national banks, although neither the banks nor their shareholders are given the benefit of exemptions allowable under the state constitution, article X, section 4, and actually allowed to others who employ substantial capital in competition with the business of national banks.

(6) In holding that Act 163 of the Legislature of 1924 is not discriminatory against shareholders in national banks; that it is violative of the constitution of the state; that state authorities charged with its enforcement may avail themselves of its unconstitutionality in this suit; and that, because it violates the state constitution, the fact that it is discriminatory in terms and in practice is not material.

(7) In holding that complainants must show competition with business in which they are actually engaged, and that proof of competition with business in which national banks normally engage is not sufficient.

(8) In holding that buying notes or lending money on real estate or chattel mortgages is not competition with complainants.

(9) In holding that capital employed in the business of building and loan associations, Morris plan banks, Morgan plan banks, small loan companies licensed under Act

7 of the Extra Session of the Legislature of 1928, finance and securities companies licensed under Act 221 of 1926, pawnbrokers, life insurance companies lending money on real estate mortgages, mortgage investment companies, bond and securities investment houses, cotton factors, brokers and individuals buying notes or lending money on mortgage security is not in competition with the business of national banks.

(10) In finding that the business of complainants does not embrace buying notes or lending money on real estate mortgages.

(11) In finding upon the facts that no substantial competition with the business of national banks is shown.

(12) In reversing the judgment of the District Court.

SYLLABUS.

1. The property and shares of national banks are exempt from taxation under state authority, except by consent of Congress. *First National Bank v. Anderson, 269 U. S. 341, 70 L. Ed. 295,* authorities *infra.*

2. Congress has not consented to the taxing of furniture and fixtures or other personal property of national banks.

3. Taxation of the capital of national banks higher than other moneyed capital coming into competition with the business of national banks violates *U. S. R. S. 5219; U. S. Constitution, 14th Amendment; Constitution of Louisiana, Sec. 1, Article X; People v. Weaver, 100 U. S. 539, 25 L. Ed. 705; Mercantile National Bank v. N. Y., 121 U. S. 138, 30 L. Ed. 895; First Na-*

tional Bank v. Anderson, 269 U. S. 341, 70 L. Ed. 295; First National Bank v. Hartford, 273 U. S. 548, 71 L. Ed. 767; Minnesota v. First National Bank, 273 U. S. 561, 71 L. Ed. 774; Commercial National Bank v. Custer County, 275 U. S. 502, 72 L. Ed. 395; Keating v. Public National Bank, 284 U. S. 586; Iowa-Des Moines National Bank v. Bennett and *Central State Bank v. Bennett, 284 U. S. 239.*

4. Moneyed capital employed in competition with the business of national banks in Louisiana is not taxed in law or practice.

FACTS AND ARGUMENT.

The property and shares of national banks are exempt from taxation under state authority, except by consent of Congress. *First National Bank v. Anderson, 269 U. S. 341,* and authorities *infra.* Optional methods of taxing shares or income are permitted, but the exercise of one method excludes the others. *R. S. 5219.* The restriction in **5219** is:

> "In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks; **Provided, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section."** (Boldface type ours).

The proviso (in boldface type) inserted by amendment of March 4th, 1923, did not materially change the law then existing. *First National Bank v. Anderson, supra.*

Considering the exemptions by law in this state, the judgment ought to be reversed without the necessity of evidence. The court should take judicial cognizance of the fact that investments and enterprises of various kinds compete with national banks as competition is construed in recent decisions of this Honorable Court. It is immaterial whether the discrimination results from law, express or as construed by state courts, or from administration. *Keating v. Public National Bank, 284 U. S. 586,* affirming without opinion the United States Court of Appeal for the Second Circuit, *47 F. (2) 561; Iowa-Des Moines National Bank v. Bennett; Central State Bank v. Bennett, 284 U. S. 239.*

The exemption provisions in the *Louisiana Constitution, Article X, Section 4,* speak for themselves. The following property is exempt from taxation:

> "Cash on hand or on deposit; loans or other obligations secured by mortgage on property located exclusively in the State of Louisiana, and the notes or other evidence thereof; loans by life insurance companies to policyholders, secured solely by their policies; loans by homestead associations to their members, secured solely by stock of such associations; debts due for merchandise or other articles of commerce or for services; obligations of the State or its political subdivisions; household property to the value of one thousand dollars; the legal reserve of life insurance companies organized under the laws of this State" * * *

Act 163 of 1924 provides that bonds of other states and political subdivisions thereof, bonds of railways, railroads and other public utilities, manufacturing and industrial corporations, and bonds secured by real estate, except

such as are exempt from taxation by law, shall be assessed at 10% of their market value. The Supreme Court of Louisiana disposed of the obvious discrimination in that act against national bank capital by declaring it unconstitutional (R. 676), thus violating the settled principle that state authorties will not be heard to challenge the constitutionality of a statute which they are charged to enforce. *State v. Taylor, 28 La. Ann. 460; State v. Shakespeare, 41 La. Ann. 156; State v. Hird, 47 La. Ann. 1679; Crespo v. Viola, 152 La. 1088.* Besides, the Louisiana Tax Commission did not question the act until it became desirable to avoid its effect in this suit. In "Suggestions to the Assessors and Parish Boards of Equalization for the 1930 Assessment" (R. 283) it said:

> "All bonds of corporations outside of Louisiana and bonds of all foreign countries are subject to taxation in this State, in accordance with the provisions of Act 163 of 1924."

The Louisiana Constitution expressly permits the classification of property for assessment, *Section 1 of Article X*, thus

> "The power of taxation shall be vested in the Legislature; shall never be surrendered, suspended or contracted away; and all taxes shall be uniform upon the same class of subjects throughout the territorial limits of the authority levying the tax, and shall be levied and collected for public purposes only. No property shall be assessed for more than its actual cash value" * * *

The Chief Justice was in error when he stated (R. 676) that all property subject to taxation shall be assessed **at its actual cash value.** The situation with respect to securi-

ties enumerated in the act is even worse. Mr. Jeter, the assessor of Caddo Parish, the second largest parish in the state, where plaintiffs are located, testified (R. 169) that they are not assessed at all and (R. 172) no serious effort is made to reach them. We have searched in vain in the 1930 report of the Louisiana Tax Commission (R. 302-645) for evidence of the assessment anywhere in the state of securities mentioned in the act. The result is that whether the act is constitutional or not, a discrimination actually exists in favor of capital invested in these securities and against capital invested in bank shares. It makes no difference whether the discrimination flows from the letter of the law or its administration. *Keating v. Public National Bank; Iowa-Des Moines National Bank v. Bennett; Central State Bank v. Bennett, supra.*

Stock in corporations other than banks is not taxed nor taxable in Louisiana. *Chassaniol v. Board of Assessors, 120 La. 777; Allgeyer v. Board of Assessors, 121 La. 149; Ficklen v. City of New Orleans, 147 La. 567;* Suggestions to Assessors by the Louisiana Tax Commission for 1930 (R. 283). All moneyed capital actually assessed is classified as credits. By Act 24 of the Extra Session of 1918, credits, including open accounts, bills receivable, judgments and promissory notes not exempt from taxation, are offset and lessened by accounts payable, bills payable and similar liabilites. The offset is not allowed to bank shareholders. Suggestions to Assessors, R. 279.

The opinion of the Supreme Court of Louisiana holds to the theory that while bank stock is assessable and stock in other corporations is not assessable, no inequality

results because the property of other corporations is assessed, and undertakes to demonstrate that where the assessable property of other corporations consists of credits, the offset by liabilites simply reduces the assessment to capital invested. The facts in this case show the fallacy of the theory.

Plaintiffs derive their powers from the government and engage in all of the normal banking activities authorized by law, including the receiving of commercial deposits evidenced by pass books and certificates, purchase and sale of stocks and bonds, including government, state and municipal bonds, the maintenance of bond and trust departments, the purchase and discount of commercial paper, including automobile paper, the loaning of money on personal security, on financial statements, on collateral and on mortgages executed directly to the bank or assigned and pledged as collateral. The "business of national banks" as used in R. S. 5219 means business in which national banks normally engage and which they are authorized to transact, and not the business a particular bank may be transacting through a given period. *First National Bank v. Anderson, supra. People v. Goldfogle, 242 N. Y. 227, 151 N. E. 452.* Otherwise one bank might be subjected to taxation while others were exempt. What plaintiffs actually do is disclosed by the testimony of Mr. Andrew Querbes, President of the First National Bank (R. 121-122):

> Q. Mr. Querbes, I hand you a statement signed by the Vice-President of your bank, Mr. McPherson, with reference to the classification

of loans. Will you kindly explain that statement to the court, beginning at the first item?

A. Well, we had Nineteen Thousand One Hundred and Thirty Eight Dollars and Ninety Three Cents ($19,138.93) in notes with one or more names. We had demand paper secured by stocks and bonds to the extent of Sixteen Thousand ($16,000.00) Dollars. We had demand paper secured by miscellaneous collateral to the amount of Seventy Six Thousand Two Hundred and Eighty Four Dollars and Eighty Six Cents ($76,284.86); time paper secured by endorsement of two names Four Million Six Hundred and Fifty Eight Thousand Nine Hundred and Forty Four Dollars and Twenty Nine Cents ($4,658,944.29); time paper secured by one name One Million Six Hundred and Sixty Eight Thousand Three Hundred and Fifty Five and Forty Eight Cents ($1,668,355.48); time paper secured by stocks and bonds One Million Six Hundred and Six Thousand Sixty Eight Dollars and Sixty Cents ($1,606,068.60); time paper secured by miscellaneous collateral Six Hundred and Seventy One Thousand One Hundred and Thirty Seven Dollars and Ten Cents ($671,137.10); and time paper secured by direct real estate loans amounting to Four Hundred and Forty Eight Thousand Four Hundred and Ninety Seven Dollars and Two Cents ($448,497.02). In that miscellaneous collateral is included approximately Four Hundred Thousand Dollars worth of mortgage paper made by other than the borrower. In other words it was secured and the mortgages were made by others than the borrower. And we had direct real estate loans, as I have stated,

that amounted to approximately Four Hundred and Forty Eight Thousand Four Hundred and Ninety Seven Dollars ($448,497.00) of mortgage loans that were put up or that were really created by the maker and put up as collateral.

Q. When you referred to direct real estate loans please explain what you mean by the term direct?

A. It means that the borrower's real estate note is taken and the borrower's note is put up as general collateral. And there is in this miscellaneous collateral Four Hundred Thousand ($400,000.00) Dollars notes of others than those put up directly by the borrower.

Q. What proportion of these mortgage notes would you (fol. 259) say were for debts previously contracted?

A. Well, there is about—previously contracted about Two Hundred and Eight Thousand ($208,000.00) Dollars.

Q. Out of the total of Nine Hundred and Fourteen Thousand Four Hundred and Ninety and Thirty Seven Cents ($914,490.37)?

A. Yes, sir. I think this one gives it more correct. Eight Hundred and Forty Eight Thousand. I mean this is as of the 31st. and this is of recent date, I believe.

Q. Mr. Querbes, about what volume of business is done by your small loan department or personal loan department to which you referred as a separate branch of your banking business?

A. Well, we have now something over One Hundred Thousand ($100,000.00) Dollars in loans.

Q. By that term small loan you mean under what sum of money?

A. Well, it runs between, from One Hundred to Three or Four Hundred.

The opinion of the Supreme Court of Louisiana (R. 675) states:

> "The testimony leaves no doubt that there has been no competition with the national banks on the part of any concern lending money on mortgages on real estate because the national banks will never handle such loans."

That statement is the basis for holding that mortgage companies and individual lenders on mortgage security are not in competition with plaintiffs. Whereas, like the First National, the Commercial National Bank buys real estate mortgage bonds in large amounts (R. 115), and lends on real estate and renews such loans from time to time (R. 110-116).

To summarize, direct loans on real estate mortgages were:

	Dec. 31, 1929	June 30, 1930	Dec. 31, 1930
First National Bank (R. 77, 78)	$333,224.46	$405,942.59	$448,497.02
Commercial National Bank (R. 76, 77)	627,191.42	534,677.22	731,038.41
American National Bank (R. 134)	100,000.00	(approximate; discontinued business Oct. 20, 1930.)	

These do not include collateral mortgages estimated by the First National Bank at $400,000.00; shown by statements of the Commercial National Bank on Decem-

ber 31st, 1929, $224,991.36; June 30th, 1930, $298,083.87; December 31st, 1930, $306,342.93.

The printed record, pp. 75-78, contains tabulated classifications of the loans of Commercial National Bank and First National Bank as of December 31, 1929, June 30, 1930, and December 31, 1930. The testimony of Paul M. Brown, pp. 133 et seq., discloses the same character of business by American National Bank.

The First National Bank had a personal small loan account ($300.00 or less) on December 31st, 1929, of $51,521.00; on December 31st, 1930, of $62,524.95; the Commercial National Bank a small loan department usually with about $100,000.00 of loans in it (R. 116) and the American National Bank loans from $50.00 to $300.00, aggregating about $200,000.00 (R. 134).

The First National Bank handled a number of chattel mortgages secured by automobiles (R. 193). They checked the cars out every thirty days to see if they were still there, and relied largely on the security of the mortgage itself (R. 195).

It was admitted (R. 102) that more than Three Million ($3,000,000.00) Dollars is and was during 1930 invested in notes secured by mortgages in Caddo Parish, Louisiana, and its vicinity, by individual citizens who habitually invest their own funds in such securities.

We quote from the trial Judge (R. 92):

"We think the admission that these investments are habitual bring them in competition with

> the banks. While some of them doubtless are for a longer term than is permitted national banks, a considerable portion of them must be within their authority. These cases are viewed broadly, the courts calling upon their general knowledge of conditions in reaching their conclusions. Exactness of proof is not required."

The courts are not justified in making a great difference between short time and long time loans, and to the readiness with which the banks obtain loans. *Georgetown National Bank v. McFarland, 273 U. S. 780; Louisville Gas & Elec. Co., 277 U. S. 32.*

The printed record (49-72) contains extracts from the charters of the following corporations: First Mortgage Corporation with a paid in capital of $50,000.00; Great American Finance System, Inc., with an authorized capital of $1,000,000.00 preferred stock, 500,000 shares of no par value Class "A" common stock, and 500,000 shares of no par value Class "B" common stock; Motors Securities Company, Inc., with a capital of $50,000.00; Motor Finance Company with a capital of $50,000.00; Glassell-Hicks Company with a capital of $40,000.00; Frost-Whited Investment Company with a capital of $200,000.00; The Morgan Plan Company with a capital of $100,000.00; General Finance Company with a capital of $200,000.00; Federal Securities Company with a capital of $100,000.00; The Querbes Company with a capital of $1,000,000.00; The Morris Plan Company with a capital of $10,000.00; Southland Investment Company with a capital of $100,000.00; Commercial Securities Company (name changed by amendment to Commercial National Company, Inc.) with a capital of $100,000.00; Great American Finance System with a

capital of $500,000.00 of preferred stock with a par value of $100.00 per share, 450,000 shares of Class "A" Preference Common, 50,000 shares Class "B" Common stock without par value. The following provision in the charter of Federal Securities Company, Inc. (R. 63) is typical of their purposes:

"ARTICLE II.

"The purpose for which this corporation is formed and its objects are hereby declared to be: To engage in the business of buying, selling, exchanging, holding and dealing generally in its own behalf or as agent, or broker for others, (fols. 155-158) in stocks, bonds, securities, bills, notes or other evidences of debt secured or unsecured; to act as broker, agent or attorney in fact, generally, in any and every kind of business transaction; to buy, sell, exchange, mortgage, pledge, hypothecate, lease or otherwise alienate or encumber any and all kinds of property, both real and personal, including franchises, servitudes, leases, credits and other incorporeal rights appertaining thereto; to make loans or borrow money by the issue of promissory notes or otherwise, with or without security, as the Board of Directors may determine; to lend its credit, make, endorse, execute or discount promissory notes, bills of exchange, letters of credit and all kinds of negotiable instruments, and in general to do any and all things necessary or incidental to the organization, maintenance or financing of all kinds of business, commercial, industrial or professional projects and enterprises in the State of Louisiana or elsewhere."

The First Mortgage Corporation is a broker for the Prudential Life Insurance Company and that company, during 1929 and 1930 had $577,900.00 invested in mortgage loans. (R. 43). First Mortgage Company is not assessed. (R. 80).

Standard Bond & Mortgage Company, a Louisiana corporation domiciled outside of Caddo Parish, is a broker for Metropolitan Life Insurance Company with mortgage loans during 1930 in the amount of $84,300.00 (R. 48). Other insurance companies lending on mortgages are the Equitable, Lamar, Great Southern, Pan-American, Union Central and Life Insurance Company of Virginia. Local individuals, partnerships and corporations advertise for mortgage loans. (R. 390).

Federal farm loans in Caddo Parish at the time of trial amounted to $494,775.00. (R. 662). The amendment to Act 14 of 1917, No. 116 of 1922, provides that shares in Federal Joint Stock Land Banks shall be assessed at 20% of their actual value.

Building & Loan Associations in Shreveport (and there are many throughout the State) during 1930 had employed approximately $15,000,000.00 in real estate loans and $700,000.00 in loans on their own stock. (R. 658-660). Their real estate loans are principally on homes, but to some extent on commercial and semi-commercial property. (R. 231). More than one-half of their capital is money invested by individuals, corporations and societies who are not borrowers, in so called paid up stock at a fixed interest. (R. 232). They advertise paid up stock for sale as an investment. (R. 78). Under their system a paid up stockholder is a depositor at interest. *Dimitry v. Shreveport Mutual Building Association, 167 La. 75.* To the extent that they receive deposits at interest they compete with the savings departments of banks. Their loans in some measure, at least, compete with the mortgage loans of banks. Many corporations domiciled outside of Caddo

Parish whose charters are not filed in evidence carry on business in Caddo Parish and in the business territory of plaintiffs. For instance, Commercial Credit Company, Inc., commercial bankers, with a capital and surplus of $4,300,000.00, employed $212,307.00 in loans through its Shreveport office (R. 35).

General American Finance System, Inc., General Finance Company, Inc., Southland Investment Company, Inc., Morgan Plan Company, Inc., Morris Plan Company of Shreveport, Inc., Fidelity Finance Company, Inc., Fulton Loan Service, Inc., Northwest Finance Corporation, Personal Finance Company and Republic Finance Corporation are in the small loan business. Ten such companies reported to the State Bank Department for 1931 total loans of $887,454.63 (R. 38). In a letter of March 19, 1931, the State Bank Examiner states:

> "You will please understand that these figures are based on three and one-half per cent business and do not reflect any loans over and above Three Hundred Dollars. Quite a number of these licenses are making loans in another department in amounts over and above this figure."

Quite a number of borrowers secure money from the Southland Investment Company at 8% and 12%, who could borrow on the same paper from the small loan department of national banks (R. 185-186).

A statement of the General American Finance System, Inc., and wholly owned subsidiaries of December 31st, 1930, (R. 661) shows:

Secured Installment Loans and Interest, $934,313.41
Secured Notes Receivable (Collateral), $266,882.47

The Motor Finance Company, Inc., Federal Securities Company, Inc., and Motor Securities Company, Inc., are engaged principally in buying or discounting notes for the purchase price of and secured by chattel mortgage on automobiles, refrigerators, radios and like commodities, but their business includes the purchase of any notes that are satisfactory and lending money, (Lieber, R. 160; Wheelis, R. 188). During 1930 Motor Finance Company, Inc., had $500,000.00 authorized and $386,400.00 actual capital and loans ranging from $2,081,746.41 to $1,160,-033.32 (R. 42); The Federal Securities Company, Inc., capital and undivided profits in excess of $200,000.00 and loans ranging from $686,697.77 to $462,917.48 (R. 655); Motor Securities Company, Inc., had $250,000.00 capital with considerable surplus and loans ranging from $1,267,-502.21 to $678,198.46 (R. 656-658).

The Federal Securities Company, Inc., makes loans to any one whom they believe to be responsible and will pay, charging 8% (R. 191).

The business of the Querbes Company, Inc., is stated by R. A. Querbes, secretary-treasurer, (R. 145) as follows:

> "We run a general investment company, selling stocks and bonds and mortgage paper and also making loans, and just a general finance business, just a general investment business."

A statement (R. 41) shows that its capital employed December 31st, 1929, was $520,557.45; December 1st, 1930, $515,409.67.

The business of Frost-Whited Investment Company, Inc., is owning securities and investments and making

loans (R. 144). The capital invested during 1930 was $1,250,000.00.

Commercial National Company, Inc., is an investment company. Its capital and undivided profits on December 31st, 1929, were $267,681.42, and investments in stocks, bonds and bills receivable $1,355,116.05 (R. 654).

The Glassell-Hicks Company, Inc., is a cotton factor, lending money on cotton to its customers at interest. A large part, but not all of the money loaned is borrowed from local state banks (R. 146-147). Its loans in 1929 ran to $750,000.00; in 1930 to $300,000.00. W. C. Lindsey is in the same business (R. 36).

The Morris Plan Bank made loans aggregating about $90,000.00 during 1930 at 10% per annum, secured by stocks and bonds as collateral, also notes signed by the maker and two co-makers (R. 173).

The Morgan Plan Bank loaned approximately $75,000.00 during 1930 at 12%, about one-half of which was secured by its own stock and the other half in the ordinary course of money lending (R. 180).

None of the capital mentioned is taxed and the assessment of credits is negligible, viz: against American Finance Corporation, $4,900.00; Fidelity Finance Company, $1,800.00; General Finance Company, $2,600.00; Morgan Plan Company, Inc., $25,800.00; Morris Plan Company of Shreveport, Inc., $16,900.00; Southland Investment Company, Inc., $27,600.00; total $79,600.00 (R. 79-81). The item of $27,600.00 against Southland Invest-

ment Company, Inc., is listed on the roll as merchandise but the assessor certifies that it was intended for credits and we concede that it should be added to the aggregate of credits assessed in Caddo Parish and to the aggregate in the state as published in the report of the Louisiana Tax Commission. The rule for assessing credits is prescribed in the Louisiana Tax Commission's Suggestions to Assessors (R. 279), subject to constitutional exemptions and deductions allowed in Act 24 of the Extra Session of 1918.

The total assessment in the state for 1930 of the capital of banks was $22,792,364.00; in Caddo Parish, $3,515,470.00. The total assessment in the state for 1930 of credits was $2,844,944.00; in Caddo Parish, $57,300.00 (subject to revision as above indicated in the certificate of the Assessor; Report of Louisiana Tax Commission, R. 555-556). The same rates apply on assessed values of bank stock and assessed values of credits.

AUTHORITIES.

There is no authority whatever for taxing furniture or fixtures or other personal property of national banks.

There is no authority in R. S. 5219, nor elsewhere that we know of, for taxing furniture or fixtures or other personal property of national banks.

Taxation that denies to the holder of national bank shares the benefit of deductions allowed in assessing competitive moneyed capital is invalid. *People v. Weaver, 100 U. S. 539.*

Mercantile National Bank v. N. Y., 121 U. S. 138, laid down this rule:

> "The terms of the Act of Congress, therefore, include shares of stock or other interests owned by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment."

The restriction applies where the competition exists only with respect to some of the features of the business of national banks, *First National Bank v. Hartford, 273 U. S. 548.*

In *First National Bank v. Anderson, 269 U. S. 341,* the pertinent allegations were:

> "The said tax as entered upon the tax list by the county auditor is void because it is a discrimination between bank stock and moneyed capital invesetd in competition therewith, and in violation of § 5219, Revised Statutes of the United States, Comp. Stat. § 9784, 6 Fed. Stat. Anno. 2d ed. p. 796. Plaintiff avers that in the town of Guthrie Center, Iowa, the total levy for local, county and state tax purposes was one hundred forty-three and five-tenths mills on the dollar for the year 1920, and said tax on plaintiff and its shareholders was estimated and charged at said rate . . . That under

the laws of Iowa a levy of only 5 mills on the dollar is imposed upon notes, mortgages and other evidences of debt, and investments of individuals in securities, which represent money at interest, and other evidence of indebtedness such as normally enter into the business of banking, and the tax for the year 1920 upon moneyed capital of individual citizens of Guthrie County, Iowa, and of the town of Guthrie Center, engaged in competition with plaintiff, was so levied and computed. That the amount of notes, mortgages and other evidences of money loaned and put out at interest by individual citizens in the county of Guthrie, Iowa, was a very large sum, which amount plaintiff is unable to state; but upon information and belief plaintiff charges said amount to be more than five millions of dollars, which were included in the 1920 assessment, and upon which the tax levy was but 5 mills on the dollar; while the total of all bank stock, including state and national, in Guthrie County, Iowa, does not exceed the sum of $316,852.00. That approximately five millions of dollars of moneyed capital in the hands of individual citizens consisting chiefly of notes, mortgages and money loaned at interest was taxed for the year 1920 in Guthrie County, Iowa, under the laws of Iowa, at 5 mills on the dollar."

This court construed these allegations to mean that "notes, mortgages, and other evidences of money loaned at interest, * * * **such as normally enter into the business of banking,**" represented moneyed capital of individuals "engaged in competition with the plaintiff," and held the complaint sufficient. The state court had held that the language used in the complaint might relate to farm mortgages and that by common knowledge farm mortgages were not in substantial competition with banks under the

prevailing methods of business in Iowa. The opinion of this court says:

> "No doubt they (the allegations of the complaint) are broad enough to include farm mortgages; but this does not weaken the allegation of competition, for while national banks were formerly prohibited from making loans on real estate, * * * the prohibition was partly withdrawn and much of that field was opened to such banks by the acts of Dec. 23, 1913, * * * and Sept. 7, 1916." *U. S. C., Title 12, Sec. 371.*

The opinion summarized earlier decisions thus:

> "1. The purpose of the restriction is to render it impossible for any state, in taxing the shares, to create and foster an unequal and unfriendly competition with national banks, by favoring shareholders in state banks or individuals interested in private banking or engaged in operations and investments normally common to the business of banking. Mercantile Nat. Bank v. New York, 121 U. S. 138, 155, 30 L. Ed. 895, 901, 7 Sup. Ct. Rep. 826; Des Moines Nat. Bank v. Fairweather, supra, 116 (68 L. Ed. 190, 44 Sup. Ct. Rep. 23)."

> "2. The term 'other moneyed capital' in the restriction is not intended to include all moneyed capital not invested in national bank shares, but only that which is employed in such way as to bring it into substantial competition with the business of national banks. Mercantile Nat. Bank v. New York, supra, 157 (30 L. Ed. 902, 7 Sup. Ct. Rep. 826); First Nat. Bank v. Chehalis County, 166 U. S. 440, 461, 41 L. Ed. 1069, 1078, 17 Sup. Ct. Rep. 629."

> "3. Moneyed capital is brought into such competition where it is invested in shares of state banks or in private banking; and also where it is employed, substantially as in the loan and invest-

ment features of banking, in making investments, by way of loan, discount or otherwise, in notes, bonds, or other securities with a view to sale or repayment and reinvestment. Mercantile Nat. Bank v. New York, supra, 155-157 (30 L. Ed. 901, 902, 7 Sup. Ct. Rep. 826); Palmer v. McMahon, 133 U. S. 660, 667, 668, 33 L. Ed. 772, 775, 776, 10 Sup. Ct. Rep. 324; Talbot v. Silver Bow County, 139 U. S. 438, 447, 35 L. Ed. 210, 213, 11 Sup. Ct. Rep. 594."

"4. The restriction is not intended to exact mathematical equality in the taxing of national bank shares and such other moneyed capital, nor to do more than require such practical equality as is reasonably attainable in view of the differing situations of such properties. But every clear discrimination against national bank shares and in favor of a relatively material part of other moneyed capital employed in substantial competition with national banks is a violation of both the letter and spirit of the restriction. New York v. Weaver, 100 U. S. 539, 25 L. Ed. 705; Boyer v. Boyer, 113 U. S. 689, 701, 28 L. Ed. 1089, 1092, 5 Sup. Ct. Rep. 706; First Nat. Bank v. Chapman, 173 U. S. 205, 216, 43 L. Ed. 669, 673, 19 Sup. Ct. Rep. 407."

In *First National Bank v. Hartford, 273 U. S. 548,* on writ of error to the Supreme Court of Wisconsin, *187 Wis. 290, 203 N. W. 721,* reviewing a judgment that reversed a judgment for plaintiff in the trial court, this court reversed the State Supreme Court on facts stated in the opinion of this court as follows:

"The evidence shows that plaintiff in the course of its business receives deposits, loans money, has a savings department, deals in exchange, buys and sells notes, government and other bonds, discounts commercial paper and acquires real estate mortgages by loan and purchase. On the trial,

plaintiff called numerous witnesses who gave testimony, uncontradicted by defendant, tending to show the nature and extent of various classes of moneyed capital in the hands of individuals in the state and the nature of its employment in competition with the business carried on by national banks. There are real estate firms engaged in lending money to individuals in the vicinity of plaintiff's banking house, the amount thus loaned amounting annually from $250,000 to $300,000. According to the testimony, the making of these loans affords the same competition to plaintiff as loans made by banks. And similar conditions obtain throughout the state. There are various individuals, co-partnerships, and corporations in the vicinity engaged in the business of acquiring and sellings notes, bonds, mortgages and securities. Substantial capital is employed in their business. Others, having their place of business in Milwaukee and in Chicago, are engaged within the state in the business of buying and selling securities both in the vicinity of plaintiff's banking house and elsewhere, and employ capital for that purpose. Securities thus acquired and offered for sale include public utility and other forms of bonds, notes and farm mortgages. In 1921, one company alone, having its place of business in Milwaukee but doing business throughout the state, including the vicinity of plaintiff's bank, sold approximately $25,000.00 of bonds and other securities. This company is shown to be affiliated with and its stock held principally by stockholders of the First Wisconsin National Bank of Milwaukee, and to have been organized for the purpose of taking over the business of the bank in dealing in securities. Neither the capital employed in these various enterprises by individuals or corporations, so far as invested in the credits, nor the shares held by investors in such corporations is subjected to the ad valorem tax."

The State Supreme Court, considering these facts in connection with its general knowledge, reached the conclusion, contrary to the trial court, that there was no capital in the hands of individual citizens which was invested or used in substantial competition with capital invested in shares of national banks, and apparently construed the law as requiring equality in taxation only of moneyed capital invested in business substantially identical with the business carried on by national banks. Of this your opinion said:

> "Under this view, if logically pursued capital invested in business engaged in some but not all of the activities of national banks as well as that employed by individuals in investment and reinvestment in securities such as we have described could not be considered in determining the question of competition.
>
> "But this court has recently had occasion, in reviewing the earlier decisions dealing with this subject, to point out that the requirement of approximate equality in taxation is not limited to investment of money capital in shares of state banks or to competing capital employed in private banking. The restriction applies as well where the competition exists only with respect to particular features of the business of national banks or where moneyed capital 'is employed, substantially as in the loan and investment features of banking, in making investments by way of loan, discount or otherwise, in notes, bonds, or other securities, with a view to sale or repayment and reinvestment.' First National Bank vs. Anderson, 269 U. S. 348, 70 L. Ed. 303, 46 Sup. Ct. Rep. 135. In so doing, it followed the holding in Mercantile Nat. Bank v. New York, 121 U. S. 138, 157, 30 L. Ed. 895, 902, 7 Sup. Ct. Rep. 826, that: 'The terms of the act of Congress, therefore, include shares of stock or other interests owned

by individuals in all enterprises in which the capital employed in carrying on its business is money, where the object of the business is the making of profit by its use as money. The moneyed capital thus employed is invested for that purpose in securities by way of loan, discount, or otherwise, which are from time to time, according to the rules of the business, reduced again to money and reinvested. It includes money in the hands of individuals employed in a similar way, invested in loans, or in securities for the payment of money, either as an investment of a permanent character, or temporarily with a view to sale or repayment and reinvestment. In this way the moneyed capital in the hands of individuals is distinguished from what is known generally as personal property . . ." * * *

"Competition may exist between other moneyed capital and capital invested in national banks, serious in character and therefore well within the purpose of § 5219, even though the competition **be with some but not all phases of the business of national banks.** Section 5219 is not directed merely at discriminatory taxation which favors a competing banking business. Competition in the sense intended arises not from the character of the business of those who compete but from the manner of the employment of the capital at their command. No decision of this court appears to have so qualified § 5219 as to permit discrimination in taxation in favor of moneyed capital such as is here contended for. To so restrict the meaning and application of § 5219 would defeat its purpose. It was intended to prevent the fostering of unequal competition with the business of national banks by the aid of discriminatory taxation in favor of capital invested by institutions or individuals engaged either in similar business or in particular operations or investments like those of national banks. Mercantile Nat. Bank vs. New York, supra, 155 (30 L. Ed. 901, 7

Sup. Ct. Rep. 826). With the great increase in investments by individuals and the growth of concerns engaged in particular phases of banking shown by the evidence in this case and in Minnesota vs. First National Bank (273 U. S. 561, post, 774, 47 Sup. Ct. Rep. 468), discrimination with respect to capital thus used could readily be carried to a point where the business of national banks would be seriously curtailed. Our conclusion is that § 5219 is violated wherever capital, substantial in amount when compared with capitalization of national banks, is employed either in a business or by private investors in the same sort of transactions as those in which national banks engage and in the same locality in which they do business." * * *

"Here, large amounts of capital are shown to be invested in businesses carried on through the state which are of the same character **as some though not all of the business** carried on by national banks. In two fields at least, loans and sales of credits, capital thus employed is shown to be in substantial competition with that of national banks." * * *

"There was, also, we think, sufficient evidence that private individuals as investors of surplus funds are engaged in loaning money at interest on real estate mortgages and other evidences of indebtedness such as normally enter into the business of banking and that these investments are of substantial amount. **We do not conceive that in order to establish the fact of competition it is necessary to show that national banks and competing investors solicit the same customers for the same loans or investments.** It is enough as stated if both engage in seeking and securing in the same locality capital investments of the class now under consideration which are substantial in amount."

In *Minnesota v. First National Bank, 273 U. S. 561,* decided on the same day as the *Hartford* case, affirming the Minnesota Supreme Court, *164 Minn. 235, 204 N. W. 874, 205 N. W. 375,* it appears that under the Minnesota statutes shares of national banks and the moneyed capital of banks or mortgage loan companies were assessed at forty per cent of their value and taxed at sixty or more mills. Money, defined as gold and silver coin, currency and deposits subject to withdrawal on demand, and credits, including every demand for money or other valuable thing, were taxed at three mills on the dollar of full cash value; and mortgages on real estate were separately taxed at a lower rate. The tax on national bank shares was annulled. The ultimate facts and findings were:

> "Taken as a whole, the evidence tends to show without material contradiction that there is a large amount of money capital in the state employed in normal banking activities such as loans, purchases and sale of notes, bonds and real estate mortgages, and that large amounts of capital are invested and reinvested in such securities by individual investors within the state.
>
> "But petitioner asserts that it does not appear from the record whether those engaged in the business of note brokers or in the business of acquiring and selling securities are individuals or corporations, and the amount of capital employed by any of them is not indicated. While this assertion is not borne out completely by the record, in the view we take, its truth is not of controlling co sequence. The businesses and activities described could not be carried on in the volume indicated without the employment of large amounts of capital and in fact some corporations engaged in these activities were shown to have a large capitalization. It

was not necessary that the particular amounts be specified. That capital, if invested in the business of individuals, is money capital in the hands of individual citizens, within the meaning of § 5219. If invested in corporations, as appears in some instances, the share capital in the hands of shareholders is likewise moneyed capital within the meaning of that section.

"It is said also that the evidence as to individuals was that large amounts of credits, including bonds, mortgages and notes were acquired by individuals by loan or purchase in the state and county, but that there is no evidence tending to show that any of these securities were held or employed by individuals in banking or investment business or in any other business. But as we have held in First National Bank v. Hartford, the competition guarded against by § 5219 may arise either from the employment of capital invested in a business, even though the competition be with some but not all phases of the business of national banks, or it may arise from the employment of capital invested by institutions or individuals in particular operations or investments like those of national banks."

In *Commercial National Bank v. Custer County*, and companion cases, *275 U. S. 520*, (memorandum), on writ of error to the Supreme Court of Montana, *76 Mont. 45, 64, 65; 246 Pac. 259, 265*, the State Supreme Court had held that other moneyed capital, as used in the equality clause of the Act of Congress, related only to capital employed in business properly classed as banking, and did not include personal investments by individual citizens not engaged in banking or investment business, such as in bonds, notes or other evidences of indebtedness, nor money used by building and loan associations to advance to mem-

bers for building and other purposes, secured by mortgages and pledges of stock in the association, nor capital employed in real estate and investment business in making loans to individuals and corporations, by a company not authorized to conduct a banking business. This Court reversed the decision without opinion, thus indicating that it was entirely wrong, on the authority of *First National Bank v. Hartford* and *Minnesota v. First National Bank, supra.*

Keating, Receiver, v. Public National Bank, 284 U. S. 586, on appeal from the Circuit Court of Appeals, Second Circuit, *47 Fed. (2) 561,* which affirmed the District Court, *38 Fed. (2) 279,* holds that while the New York statutes in terms tax national bank stock and competing capital equally, by construction the New York courts have exempted a large amount of competing capital, in consequence of which the taxing of national bank shares is invalid.

Iowa-Des Moines National Bank v. Bennett and *Central State Bank v. Bennett, 284 U. S. 239,* reviewed a judgment of the Supreme Court of Iowa. A national bank and a state bank were suing for the refund of taxes paid under protest because competing capital was taxed at a lower rate. The State Court had found and this Court assumed that competition existed. The State Court denied recovery. The grounds were that the state law taxed the competing capital equally with bank capital and the assessor had so assessed it, but in extending taxes on the roll the auditor had applied to the competing capital a rate fixed by law on other intangibles which was lower than the rate fixed on banking capital and capital employed in com-

petition with it. The State Court held that the error was the act of an individual, that it was in the power of the state to correct it and collect the deficit in taxes on the competing capital and that plaintiffs had a remedy to compel that it be done. This Court reversed the judgment, holding that plaintiffs were not relegated to that remedy, that the fault of the auditor in extending the taxes was the fault of the state and that the unequal taxation violated R. S. 5219 as to national bank capital and the 14th amendment as to both national and state bank capital.

The competition in each of the cases lately before this Court and in other cases before inferior courts, *Boise City National Bank v. Ada County*, on demurrer, (Idaho), *37 Fed. (2) 947;* on the merits, *48 Fed. (2) 222; Toy National Bank v. Nelson*, on demurrer, (Iowa), *38 Fed. (2) 261; Commercial National Bank v. Franklin County*, (Ohio), *45 Fed. (2) 213*, is of the same character as the competition shown in this case. In *Boise City National Bank v. Ada County*, moneyed capital held to be in competition with national banks was capital employed in loaning money and acquiring and selling notes, bonds, stocks and mortgages, and obtaining the savings and surplus funds of investors, by investment houses, savings and loan associations, building and loan companies, insurance companies, real estate mortgage loan companies, and finance companies handling automobile and other paper. In *Commercial National Bank v. Treasurer of Franklin County*, moneyed capital held to be in competition with national banks was capital in the hands of building and loan associations, mortgage companies, and finance companies. Minor details, interest rates, the duration of loans or

mortgages, the quality and stability of security required by national banks as distinguished from the quality and stability of security required by other investors and temporary local policies of particular banks are not important. The test is whether the capital of national banks is taxed higher than other capital employed for the same general purpose and in the same manner that capital of national banks is normally employed, that is, for making money by the use of money through investment in loans, discounts and other evidences of debt.

We submit, therefore, on the authority here cited that the judgment of the Supreme Court of the State of Louisiana should be reversed.

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APPENDIX.

SECTION 5219 OF THE U. S. REVISED STATUTES, U. S. CODE, TITLE 12, SECTION 548, AS AMENDED BY ACT MARCH 25, 1926.

STATE TAXATION. The legislature of each State may determine and direct, subject to the provisions of this section, the manner and place of taxing all the shares of national banking associations located within its limits. The several States may tax said shares, or include dividends derived therefrom in the taxable income of an owner or holder thereof, or tax the income of such associations, provided the following conditions are complied with:

1. (a) The imposition by said State of any one of the above three forms of taxation shall be in lieu of the others.

(b) In the case of a tax on said shares the tax imposed shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State coming into competition with the business of national banks: PROVIDED, That bonds, notes, or other evidences of indebtedness in the hands of individual citizens not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business, shall not be deemed moneyed capital within the meaning of this section.

(c) In case of a tax on the net income of an association, the rate shall not be higher than the rate assessed upon other financial corporations nor higher than

the highest of the rates assessed by the taxing State upon the net income of mercantile, manufacturing and business corporations doing business within its limits.

(d) In case the dividends derived from the said shares are taxed, the tax shall not be a greater rate than is assessed upon the net income from other moneyed capital.

(2) The shares or the net income as above provided of any national banking association owned by nonresidents of any State, or the dividends on such shares owned by such non residents, shall be taxed in the taxing district where the association is located and not elsewhere; and such associations shall make return of such income and pay the tax thereon as agent of such nonresident shareholders.

3. Nothing herein shall be construed to exempt the real property of associations from taxation in any State or in any subdivision thereof, to the same extent, according to its value, as other real property is taxed.

(4) The provisions of section 5219 of the Revised Statutes of the United States as in force prior to March 4, 1923, shall not prevent the legalizing, ratifying, or confirming by the States of any tax heretofore paid, levied, or assessed upon the shares of national banks, or the collecting thereof, to the extent that such tax would be valid under said section. (R. S. Parg. 5219; Mar. 4, 1923, C. 267, 42 Stat. 1499)

ACT NO. 14 OF THE GENERAL ASSEMBLY OF LOUISIANA, OF 1917, AS AMENDED BY ACTS 116 OF 1922 AND 221 OF 1928.

To provide for the levying of an annual assessment on the shares of stock and real estate of all banks, banking companies, firms, associations, or corporations engaged in the banking business, chartered under the laws of the State of Louisiana, or the United States, doing business in the State of Louisiana; to declare the shares of stock and other property of all such banks, banking companies, firms, associations or corporations engaged in the banking business subject to taxation for all purposes; to provide the method of making the assessment of such property and collecting the taxes thereon; to provide penalties for the violation of this Act, and to repeal all laws or parts of laws in conflict herewith.

Section 1. (As amended by Act 116 of 1922.) Be it enacted by the General Assembly of the State of Louisiana, That the shares of stock and the real estate of all banks, banking companies, firms, associations, or corporations doing a banking business in this State chartered by the laws of this State or the United States, be and they are hereby declared subject to taxation for all purposes in the State of Louisiana; provided, however, that shares of stock in Federal Joint Stock Land Banks organized under the farm loan act of 1916 of the United States Congress shall be assessed for the purpose of taxation at ten per cent of their actual value calculated and ascertained by the method provided in this act.

Section 2. Be it further enacted, etc., That no assessment shall hereafter be made against the capital stock, surplus, or undivided profits of any bank, banking company, firm, association or corporation engaged in the banking business, chartered under the laws of this State, or the United States, doing business in this State, whose capital stock is represented by shares, but the shares shall be assessed at actual value or the same percentage of actual value as that fixed on other property for State and local assessment purposes, to the shareholders at the domicile or location of the bank, banking company, firm, association, or corporation, who appear as such upon the books, regardless of the domicile of the shareholder and regardless of any transfer not registered or entered upon its books. It shall be the duty of the president, vice-president, cashier, or assistant cashier of any such bank, banking company, firm, association, or corporation engaged in the banking business to furnish to the assessor, on or before Sept. 1st, 1917, and on or before the 20th day of January of each and every year thereafter a complete list sworn to of those who are carried on its books as shareholders. All taxes so assessed against the shares of stock shall be paid by the bank, banking company, firm, association, or corporation engaged in the banking business direct, and it shall be entitled to collect the amount thus paid from the shareholders or their transferees.

Section 3. Be it further enacted, etc., That when any bank, banking company, firm, association, or corporation is engaged in the banking business, and shall operate a branch bank or banks, banking office or banking offices in any Parish or Parishes other than the Parish of its legal

domicile, its assessment shall be divided for State and local purposes, and the number of shares, or fractions thereof, to be assessed in each Parish in which such bank and its branches are maintained shall be determined by the proportion which the capital stock assigned to each bank and branch of such bank shall bear to the whole capital stock; provided that in the event, for any reason, it should be held by the courts that this section is invalid and unenforceable, then and in such event, the invalidity of this section shall not affect enforcement of the remainder of this Act, and all such banks shall then be assessed at the location or domicile of the main bank in the same manner as banks without branches for current and back taxes.

Section 4. (As amended by Act 221 of 1928.) That the basis for arriving at the value of the said shares of stock in any bank, banking company, firm, association, or corporation engaged in the banking business shall be the value of said stock as shown by the statements of said bank, banking company, firm, association, or corporation, made to the Comptroller of the Currency and required to be published, in the case of banks, banking companies, firms, associations, or corporations, created under the laws of the United States, and the statement made to the State Bank Commissioner, and required to be published, in the case of banks, banking companies, firms, associations, or corporations, created under the laws of the State of Louisiana, less the value, as shown on said statements, of the real estate owned by said bank, banking company, firm, association, or corporation, and less the value, as included in said statements, of the capital stock and obligations of any corporations, all the capital stock of which (except

directors' qualifying shares, if any) is owned by said bank, banking company, firm, association, or corporation, and all, or substantially all, the assets of which consist of real estate acquired for debt and/or the building or buildings in which are located the main and/or branch banking house or houses of said bank, banking company, firm, association, or corporation, and/or the land on which the same is situated and/or the furniture and fixtures located thereon and owned in connection therewith. All banks, banking companies, firms, associations, or corporations, engaged in the banking business, State or National, are hereby required to make and furnish, on or before January 20th of each and every year, to the local assessor and to the Louisiana Tax Commission, a duly authenticated statement similar to those made by them as above set out to the Comptroller of the Currency or to the State Bank Commissioner, showing their conditions at the close of business on the 31st day of December of the previous year.

Section 5. (As amended by Act 221 of 1928.) That the banking house and all real estate owned by any bank, banking company, firm, association, or corporation, shall be assessed directly to it at actual value, or whatever percentage thereof is determined upon by the Louisiana Tax Commission for State assessment purposes, and the local taxing authorities for local purposes, without regard to the value of said property as shown on the statements of such bank, banking company, firm, association or corporation, but which shall be equal and uniform with all other property of the same class.

Section 6. Be it further enacted, etc., That the real estate of any bank, banking company, firm, associa-

tion, or corporation shall be assessed in the parish where it is located and the taxes paid in said parish.

Section 7. Be it further enacted, etc., That the taxes on the shares of stock and real estate owned by any bank, banking company, firm, association, or corporation engaged in the banking business shall be collected in the same manner as the taxes on other property of a like nature are collected. In the event that any bank, banking company, firm, association, or corporation, doing business in this State, chartered under the laws of the United States, or the State of Louisiana, is, by decision of the courts, held not to be liable to pay the taxes on the shares of the shareholders, then the taxes shall be collected from and paid by such shareholders, and each shareholder failing to pay the same may be proceeded against by a rule to produce and by all the other proceedings provided for the collection of taxes on movable property.

Section 8. Be it further enacted, etc., That any president, vice-president, cashier, or assistant cashier, of any bank, banking company, firm, association, or corporation engaged in the banking business who shall fail or refuse to comply with any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than Fifty ($50.00) Dollars, nor more than Five Hundred ($500.00) Dollars, or imprisoned for a period of not less than thirty (30) days nor more than one (1) year.

Section 9. Be it further enacted, etc., That all laws and parts of laws in conflict herewith or contrary hereto be and the same are hereby repealed.

ACT NO. 163 OF THE LEGISLATURE OF LOUISIANA OF 1924.

To make bonds issued by any State and political subdivisions thereof; bonds of railways, railroads, other public utilities, manufacturing and industrial corporations, and bonds secured by real estate, except such as are exempt from taxation by law, a separate class for the purpose of taxation and providing the method of assessing the same and repealing all laws in conflict herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That bonds of any State of the United States and political subdivisions of any such State, bonds of railways, railroads and other public utilities, manufacturing and industrial corporations and bonds secured by real estate, except such as are exempt from taxation by law, shall be and they are hereby made a separate class for the purpose of taxation and such property subject to taxation shall be assessed at ten per cent (10%) of the market value thereof.

Section 2. That all laws and parts of laws in conflict herewith be and the same hereby are repealed.

ACT NO. 24 OF THE EXTRA SESSION OF THE LEGISLATURE OF LOUISIANA OF 1918.

To provide for the manner of assessing credits, open accounts, bills receivable, judgments and all Promissory Notes.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That all credits, including open accounts, bills receivable, judgments and all promissory notes not exempt from taxation shall be assessed in the same manner as all other personal property, but shall be off-set and lessened by the actual bona fide accounts payable, bills payable and other liabilities of a similar character and which are not exempt from taxation, of the corporation, partnership, firm or individual in whose name the said credits are assessed, provided, that any indebtedness due by branch houses or subsidiary corporations to the parent company or corporation, or by corporations, the majority of whose capital stock is owned and controlled by another corporation, or by its stockholders, engaged in the same business, due to that other corporation so owning its capital stock, shall not be so deducted, and, provided further that the provisions of this act shall not apply to the assessment of banks and trust companies.

Section 2. Be it further enacted, etc., That all laws or parts of law inconsistent or in conflict herewith be and the same are hereby repealed.